

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 07-CR-64-CVE
	)	
MIGUEL MONTES,	)	
	)	
Defendant.	)	

**OPINION & ORDER**

Now before the Court is Government's Motion to Quash Subpoena [Docket No. 33] and Government's Supplemental Motion to Quash Subpoena [Docket No. 36]. The subpoena at issue sought to have law enforcement records produced by the Oklahoma Department of Public Safety. These documents would identify the race and ethnic backgrounds of motorists stopped by the specific arresting officer and his co-arresting officers during the past year and a half at the same location and for the same reason as Miguel Montes, Defendant. After considering the oral arguments of the parties, the briefs filed by the parties, and the case law cited by the parties, the Court grants Government's motion to quash Defendant's subpoena, and grants Government's supplemental motion to quash Defendant's subpoena.

In *United States v. James*, the Tenth Circuit stated that "[a] defendant who claims he was targeted for prosecution because of race is entitled to discovery on that claim only if he presents '*some evidence tending to show* the existence of the essential elements of the . . . defense, discriminatory effect and discriminatory intent.'" 257 F.3d 1173, 1178 (10th Circuit 2001) (quoting *United States v. Armstrong*, 517 U.S. 456, 468 (1996)). The court

in *James* further found that in order “[t]o prove discriminatory effect in a race-based selective prosecution claim, a defendant must make a *credible showing* that a similarly-situated individual of another race could have been prosecuted for the offense for which the defendant was charged, but was not.” *James*, 257 F.3d at 1179 (emphasis added). The identification of a similarly-situated individual or the presentation of statistical evidence to that effect “may satisfy the ‘credible showing’ requirement.” *Id.*

Here, Defendant claims he was targeted for prosecution based on his race, and is thus entitled to discovery on that claim. Defendant, however, has failed to meet the threshold requirement showing a discriminatory effect or intent on the part of the Government.

IT IS THEREFORE ORDERED that Government’s Motion to Quash Defendant’s Subpoena and Government’s Supplemental Motion to Quash Defendant’s Subpoena are hereby granted.

DATED THIS 5TH DAY OF JUNE, 2007.

  
Sam A. Joyner  
United States Magistrate Judge